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March 2, 2017

SENT VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

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Re: Notice of Violation and Intent to File Suit Under the Federal Water Pollution Control Act

To Whom It May Concern:

I am writing on behalf of California Communities Against Toxics ("CCAT") regarding violations of the Clean Water Act[1] ("CWA" or "Act") and California's General Industrial Storm Water Permit[2] occurring at those industrial facilities owned and operated by Mattco Forge, Inc. ("Mattco" or "Owner") at and/or near 16443 Minnesota Avenue and 7530 Jackson Street in Paramount, California ("Facilities"). CCAT is a non-profit public benefit corporation dedicated to working with communities to advocate for environmental justice and pollution prevention. CCAT has members living in and around Paramount, as well as throughout the Los Angeles River Watershed. CCAT and its members are deeply concerned with protecting public health and the environment in and around their communities.

This communication ("Notice Letter") is prepared pursuant to the Act, 33. U.S.C. §§ 1365(a) and (b), and is sent to you and Mattco as the responsible owners and/or operators of the Facilities in order to: 1) detail violations of the Act and General Industrial Permit occurring at the Facilities, and b) provide formal notice that CCAT intends to file a federal enforcement action against Mattco for violations of Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311, 1342.

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[1] Federal Water Pollution Control Act 33 U.S.C. § 1251 *et seq.*

[2] National Pollution Discharge Elimination System ("NPDES") General Permit No. CAS000001, Water Quality Order No. 92-12-DWQ, Order No. 97-03-DWQ, as amended by Order No. 2014-0057-DWQ. Between 1997 and June 30, 2015, the Storm Water Permit in effect was Order No. 97-03-DWQ ("1997 Permit"), which as of July 1, 2015, was superseded by Order No. 2014-0057-DWQ ("2015 Permit"). As explained herein, the 2015 Permit and the 1997 Permit contain the same fundamental requirements and implements the same statutory mandates. CCAT may herein refer to the two versions interchangeably as the "General Industrial Permit" or "Permit."

I. Background

A. The Clean Water Act

The objectives of the Act are to "restore and maintain the chemical, physical and biological integrity of the Nation's waters." 33 U.S.C. §§ 1251(a), 1311(b)(2)(A). To this end, the Act prohibits the discharge of pollutants from any point source into waters of the United States except in compliance with other requirements of the Act, including Section 402, which provides for NPDES permits. 33 U.S.C. §§ 1311(a), 1342(p), 40 C.F.R. § 122.26(c)(1). In California, the EPA has delegated it authority to issue NPDES permits to the State Water Resources Control Board ("State Board"). 33 U.S.C. §§ 1342(b), (d). The Los Angeles Regional Water Quality Control Board ("Regional Board") is responsible for issuance and enforcement of the General Permit in Region 4, which covers Mattco's Facilities.

Section 505 authorizes citizens to file suit in federal court against facilities alleged to be in violation of the Act and/or related permits. 33 U.S.C. § 1365(a). Section 505(b) of the Act requires citizens to give notice to alleged violators at least sixty (60) days before initiating civil action under Section 505(a). 33 U.S.C. § 1365(b). Notice must be given to the alleged violator(s), the Administrator of the United States Environmental Protection Agency ("EPA"), the Regional Administrator of EPA, the Executive Officer of the water pollution control agency in the State in which the alleged violations occur, and, if the violator is a corporation, the registered agent of the corporation. 40 C.F.R. § 135.2(a)(1). Unless Mattco takes appropriate action to remedy ongoing violations of the Act, CCAT will file suit in U.S. District Court following expiration of the 60-day notice period, seeking civil penalties, injunctive relief, fees and costs. Limited by the Act's five-year statute of limitations, Mattco is subject to civil penalties for all violations of the Act occurring at the Facilities since March 2, 2012.[3]

C. The Facilities

The Facilities operating under Waste Discharger Identification No. 4 19I025496 are located at and/or near 16443 Minnesota Avenue and 7530 Jackson Street in Paramount, California. According to the Stormwater Pollution Prevention Plan ("SWPPP") dated May 22, 2015 on file with the Regional Board, the facility on Minnesota Ave. comprises approximately four acres. The Notice of Intent to Comply With the Terms of the General Permit to Discharge Storm Water Associated with Industrial Activity ("NOI") filed with the State and Regional Boards on June 25, 2015 certifies that the Facilities cover four acres. The NOI further certifies that the Facilities' Standard Industrial Classification ("SIC") is 3462 (Iron and Steel Forgings). According to information available to CCAT, activities at the Facilities' include development, design, manufacture and testing of engineered forged metal products for the aerospace, defense, oil & gas, transportation and power generation sectors. According to information available to

[3] Mattco and the Facilities are liable for both violations of the 1997 Permit and ongoing violations of the 2015 Permit. *See Illinois v Outboard Marine, Inc.* 680 F.2d 473, 480-81 (7th Cir. 1982) (granting relief for violations of an expired permit); *Sierra Club v Aluminum Co of Am.*, 585 F. Supp. 842, 853-54 (N.D.N.Y 1984) (holding that the Clean Water Act's legislative intent and public policy favor allowing penalties for violations of expired permits); *Pub. Interest Research Group of N.J. v Carter Wallace, Inc.* 684 F. Supp. 115, 121-22 (D.N.J. 1988) (holding that limitations of an expired permit, when transferred to a newly issued permit, are viewed as currently in effect for enforcement purposes).

CCAT, the Facilities products are forged from nickel, titanium, aluminum, stainless steel, alloy and carbon steel, magnesium, cobalt and as many as 11 "super" alloys.

According to SWPPP, the Facilities are "100% impervious, including paved and concrete areas and roofed buildings. The buildings onsite include an office building with warehouse space, test shop, main shop, tool building and training/IT building. There is a parking lot for employees and visitors outside the main office building. Loading/Unloading of finished product occurs at the warehouse building off of Jackson Street. Outdoor storage of bulk materials and storage tanks occur in the paved yard in from of the main shop or south of the tool building." SWPPP Section 2.1.3 at 8.

The Facilities are located approximately 1.3 miles east of the Los Angeles River. There are at least two drainage areas at the Facilities. The first drainage flows to a storm drain within the property perimeter located outside of the South-West corner of the Office and Warehouse building. The second drainage drains the area outdoor material storage areas and the circulation area to two storm drains also within the property perimeter. According to the SWPPP, all storm drains drain to the municipal storm system.[4]

EPA's Industrial Storm Water Fact Sheet for AA: Fabricated Metal Products Manufacturing Facilities[5] indicates that polluted discharges from industrial activities like those conducted at the Facilities commonly contain substances affecting pH; metals, such as iron, aluminum, and nickel; toxic metals, such as lead, zinc, cadmium, chromium, and copper; organics; chemical oxygen demand ("COD"); biological oxygen demand ("BOD"); total suspended solids ("TSS")[6]; fuel additives, gas/diesel fuel, oil and grease ("O&G"); coolants and solvents; acid/alkaline waste; and, trash and debris. Similarly, EPA's Industrial Storm Water Fact Sheet for Sector AB: Transportation Equipment, Industrial, or Commercial Machinery Manufacturing Facilities[7] indicates that polluted discharges from industrial activities like those conducted at the Facilities commonly contain TSS; O&G; organics; solvents; acid/alkaline wastes; heavy metals; toxic metals such as lead, arsenic, cadmium, and chromium; COD; gasoline and diesel. Many of these pollutants are on the list of chemicals published by the State of California as known to cause cancer, birth defects, and developmental or reproductive harm. Discharges of polluted storm water to the local surface waters pose carcinogenic and reproductive toxicity threats to the public, and adversely affect the aquatic environment.

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[4] According to information available to CCAT, all storm water from the facility drains to BI 0559 – Line C of storm drain system operated by County of Los Angeles.

[5] *Available at* https://www3.epa.gov/npdes/pubs/sector_aa_fabmetal.pdf

[6] High concentrations of TSS degrade optical water quality by reducing water clarity and decreasing light available to support photosynthesis. TSS has been shown to alter predator prey relationships (for example, turbid water may make it difficult for fish to hunt prey). Deposited solids alter fish habitat, aquatic plants, and benthic organisms. TSS can also be harmful to aquatic life because numerous pollutants, including metals and polycyclic aromatic hydrocarbons, are absorbed onto TSS. Thus, higher concentrations of TSS results in higher concentrations of toxins associated with those sediments. Inorganic sediments, including settleable matter and suspended solids, have been shown to negatively impact species richness, diversity, and total biomass of filter feeding aquatic organisms on bottom surfaces.

[7] *Available at* https://www.epa.gov/sites/production/files/2015-10/documents/sector_ab_transport.pdf.

D. Receiving Waters

With every significant rainfall event, millions of gallons of polluted storm water originating at industrial facilities pour into storm drains and waterways across Los Angeles County. The consensus among agencies and specialists is that storm water pollution accounts for more than half of the total pollution entering surface waters each year. These discharges contribute not only to the impairment of the waters receiving polluted discharges, but all downstream waters including the Pacific Ocean. Contaminated discharges threaten the health of the aquatic and associated terrestrial ecosystems in the receiving waters, we well as the health and welfare of communities that live near and/or use these resources.

The Facilities' stormwater discharges drain from Reach 2 of the Los Angeles River ("River"), through Reach 1 of the River, the Los Angeles River Estuary and the San Pedro Bay to the Pacific Ocean via (collectively "Receiving Waters"). The Regional Board identifies beneficial uses of the Receiving Waters and establishes water quality standards in the *Water Quality Control Plan – Los Angeles Region: Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties*[8] (adopted June 13, 1994, as amended) ("Basin Plan"). The beneficial uses of the Receiving Waters include municipal and domestic water supply, groundwater recharge, water contact recreation,[9] non-contact water recreation,[10] warm freshwater habitat, wildlife habitat, wetland habitat, marine habitat, rare, threatened, or endangered species, preservation of biological habitats, migration of aquatic organisms, spawning, reproduction and/or early development, and shellfish harvesting.

The Basin Plan includes a narrative toxicity standard which states that "[a]ll waters shall be maintained free of toxic substances in concentrations that are toxic to, or that produce detrimental physiological responses in, human, plant, animal, or aquatic life." Basin Plan at 3-38. The Basin Plan includes a narrative oil and grease standard which states that "[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water, that cause nuisance, or that otherwise adversely affect beneficial uses." Basin Plan at 3-29. The Basin Plan provides that "[w]aters shall not contain suspended or settleable material in concentrations that cause nuisance or adversely affect beneficial uses." Basin Plan at 3-37. The Basic Plan provides that "[t]he pH of inland surface waters shall not be depressed below 6.5 or raised above 8.5 as a result of waste discharges." Basin Plan at 3-35. The Basin Plan provides that "[s]urface waters shall not contain concentrations of chemical constituents in amounts that adversely affect any designated beneficial use." Basin Plan at 3-24. The Basin Plan provides that "[w]aters shall not contain floating materials, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses." Basin Plan at 3-26. The Basin Plan provides that "[w]aters shall be free of coloration that causes nuisance or adversely affects beneficial uses." Basin Plan at 3-25. The Basin Plan provides that "[w]aters shall be free of changes in turbidity

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[8] *Available at* http://www.waterboards.ca.gov/losangeles/water_issues/programs/basin_plan/.

[9] Contact recreation use includes fishing and wading. Basin Plan at 2-2.

[10] Non-contact water recreation use is defined as "[u]ses of water for recreational activities involving proximity to water, but not normally involving contact with water where water ingestion is reasonably possible. These uses include, but are not limited to, picnicking, sunbathing, hiking, beachcombing, camping, boating, tidepool and marine life study, hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities." Basin Plan at 2-2.

that cause nuisance or adversely affect beneficial uses." Basin Plan at 3-38. The Basin Plan provides that "[w]aters shall not contain taste or odor-producing substances in concentrations that impart undesirable tastes or odors to fish flesh or other edible aquatic resources, cause nuisance, or adversely affect beneficial uses." Basin Plan at 3-37.

The EPA has adopted freshwater numeric water quality standards for zinc of 0.120 mg/L (Criteria Maximum Concentration – "CMC"), for copper of 0.013 mg/L (CMC), and for lead of 0.0025 mg/L (Criteria Continuous Concentration – "CCC"). 65 Fed. Reg. 31712 (May 18, 2000) (California Toxics Rule – "CTR").[11]

According to the 2012 303(d) List of Impaired Water Bodies,[12] Reaches 1 and 2 of the River are impaired by pollutants such as pH, cyanide, diazinon, lead, nutrients, ammonia, cadmium, coliform bacteria, copper, trash, zinc, and oil. The Los Angeles River Estuary is impaired by, among other pollutants, chlordane, sediment toxicity, and trash.[13] The Los Angeles/Long Beach Harbor is impaired by at least chrysene, copper, sediment toxicity, mercury, and zinc.[14] The San Pedro Bay is impaired by sediment toxicity, and the Long Beach City Beach, one of the San Pedro Bay beaches, is impaired by indicator bacteria.[15]

The Receiving Waters are ecologically significant. Although pollution and habitat destruction have drastically altered the natural ecosystem, the Receiving Waters are still essential habitat for dozens of fish and bird species, as well as macro-invertebrate and invertebrate species. Storm water and non-storm water contaminated with sediment, heavy metals, and other pollutants harm the special aesthetic and recreational significance the Receiving Waters have for people in surrounding communities, including CCAT members. The public's use of the Receiving Waters for water contact sports and fishing exposes many people to toxic metals, pathogens, bacteria and other contaminants in storm water and non-storm water discharges. Non-contact recreational and aesthetic opportunities, such as wildlife observation, are also impaired by polluted discharges to the Receiving Waters.

II. Storm Water Permitting and Enforcement

A. Storm Water Permitting

The Act prohibits any discharges of storm water associated with industrial activities (and authorized non-storm water discharges) that have not been subjected to Best Available Technology Economically Achievable ("BAT") for toxic[16] or non-conventional pollutants, and Best Conventional Pollution Control Technology ("BCT") for conventional pollutants[17] (33 U.S.C. §§ 1311(b)(2)(A), (B)). However, regulators recognize the challenge of defining and

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[11] These values are expressed as a function of total hardness (mg/L) in the water body and correspond to a total hardness of 100 mg/L, which is the default listing in the California Toxics Rule.
[12] *Available at* http://www.waterboards.ca.gov/water_issues/programs/tmdl/integrated2012.shtml
[13] *Id.*
[14] *Id.*
[15] *Id.*
[16] Toxic pollutants are listed at 40 C.F.R. § 401.15 and include copper, lead and zinc, among others.
[17] Conventional pollutants include Total Suspended Solids, Oil and Gas, pH, biochemical oxygen demand and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional.

enforcing the standard, as well as the strain that strict application would impose on industry. Thus, rather than requiring the specific application of BAT or BCT to each individual discharge of storm water, Mattco's compliance with the substantive and procedural terms and conditions of California's Permit serves as a proxy for compliance with the Federal Statute. *See e.g.* 1997 Permit, Finding 10.

Compliance with the General Industrial Permit generally constitutes compliance with the Act for purposes of storm water discharges. 33 U.S.C. §§ 1311(b)(2)(A), 1311(b)(2)(E). Conversely, failures to comply with the Permit's terms and conditions constitute violations of the Act. *See* 1997 Permit, Section C(1); *see also* 2015 Permit, Section XXI(A). The Permit essentially requires facility owners/operators to adhere to the following requirements: i) submit an NOI certifying the type(s) of activity undertaken at a facility, and committing the operator to comply with all terms and conditions of the Permit; ii) eliminate unauthorized non-storm water discharges;[18] iii) develop and implement a SWPPP that assesses sources of pollutants, and describes Best Management Practices ("BMPs") that will reduce or prevent pollutants in storm water discharges; iv) monitor, sample and/or analyze storm water discharges and authorized non-storm water discharges; and v) file complete and accurate Annual Reports by July 15 of each year, in which the owner/operator describes the facilities, summarizes the past year's industrial activities and certify compliance with the terms and conditions of the Permit.

The Permit's principal mechanisms for ascertaining compliance with the Act's BAT/BCT mandate, therefore, are to require:

a. basic planning—the preparation and implementation of a comprehensive SWPPP that describes suitable site-specific BMPs;
b. monitoring and validation—the development and implementation of a Monitoring and Reporting Program ("M&RP"), which emphasizes the collection and analysis of stormwater discharges to inform owners/operators regarding commensurate changes to BMPs that are necessary to comply with the Permit and Act; and
c. c) corrective action as necessary—authentic efforts to improve and modify practices at the facility where owners/operators become aware of deficiencies.

All facilities must analyze each sample for three sets of pollutants—basic parameters, industry-specific parameters, and site-specific parameters. Basic parameters are those standard pollutants for which every industrial facility must test, and include TSS, pH, Specific Conductance ("SC")[19], and either TOC or O&G. 1997 Permit, Section B(5)(c)(i); 2015 Permit, Sections XI(B)(6)(a)-(b). Industry-specific parameters are those commonly associated with activities in the particular industry, and are set in relationship to a facility's SIC code. 1997 Permit, Section B(5)(c)(iii); 2015 Permit, Section XI(B)(6)(d). Lastly, site-specific parameters are those pollutants associated with processes and activities at a particular facility. 1997 Permit,

[18] Discharge Prohibition A(1) of the 1997 Permit and Discharge Prohibition III(B) of the 2015 Permit prohibit the discharge of materials other than storm water (defined as non-storm water discharges) that discharge either directly or indirectly to waters of the United States. Discharge Prohibition A(2) of the 1997 Permit and Discharge Prohibition III(C) of the 2015 Permit prohibit storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance.

[19] The 2015 Permit does not require facilities to analyze samples for Specific Conductance.

Section B(5)(c)(ii); 2015 Permit, Section XI(B)(6)(c).

Facility owners and operators must then compare analytical data to numeric values or limits published by the EPA ("Benchmarks") that serve as objective measures for evaluating whether a facility's BMPs achieve the statutory BAT/BCT standards, and are therefore operating in compliance with the Act. *See United States Environmental Protection Agency NPDES Multi-Sector General Permit for Storm Water Discharges Associated with Industrial Activity*, 80 Fed. Reg. 34,403, 34,405 (June 16, 2015); MSGP, 73 Fed. Reg. 56,572, 56,574 (Sept. 29, 2008); MSGP, 65 Fed. Reg. 64,746, 64,766-67 (Oct. 30, 2000) (as modified effective May 9, 2009). Under certain conditions, a facility will also be required to compare analytical data to numeric and narrative limits established elsewhere, including in the Basin Plan and CTR.

The 1997 Permit embodied an iterative and flexible approach whereby the analyses of storm water samples was supposed to inform a permittee as to the efficacy of its BMPs. The 1997 Permit optimistically envisioned a process whereby facility owners/operators would proactively revise BMPs so as to reduce pollutant concentrations to within numeric or narrative limits. In response to a widespread industry practice of ignoring and/or avoiding the voluntary iterative process, the 2015 Permit established numeric action levels ("NALs") and a compulsory BMP-review process. *See* 2015 Permit Factsheet at 55-60. An exceedance of a NAL triggers a requirement under which dischargers must prepare various Exceedance Response Actions ("ERAs"), i.e. employ a stormwater professional to conduct an audit of the facility, design and implement improved BMPs, and revise the facility SWPPP. 2015 Permit, Section XII.

B. Citizen Enforcement

In designing the Act, Congress acknowledged "the Government simply is not equipped to take court action against the numerous violations [...] likely to occur [under the Act]." 116 Cong. Rec. 33,104 (1970) (statement of Sen. Hart).[20] In anticipating this challenge, Congress crafted Section 505 to encouraged citizen plaintiffs to act as "private attorney's general." Citizen plaintiffs, therefore, fill a critical social role by enforcing the Act's mandate and are "welcomed participants in the vindication of environmental interests." *Friends of the Earth v. Carey*, 535 F.2d 165, 172 (2nd Cir. 1976).

Citizen plaintiffs also fill an essential economic/market role. Water pollution results in inefficient economic outcomes caused by market failures frequently associated with common pool resources like surface waters and oceans. Enforcement actions under Section 505 help correct these market failures by forcing firms to internalize the social welfare impacts (i.e. costs) of water pollution that would otherwise be borne by society. Society at large pays handsomely when business owners fail to operate efficiently. The most common costs are associated with human illness (health care costs, productivity loss, increased mortality/death, etc.), habitat loss and ecosystem service disruption, wildlife disturbances, and detrimental impacts to tourism.

[20] *See also* 116 Cong. Rec. 33,104 (1970) (statement of Sen. Muskie) "I think it is too much to presume that, however well staffed or well intentioned these enforcement agencies are, they will be able to monitor the potential violations of all the requirements contained in the implementation plans that will be filed under this act, all the other requirements of the act, and the responses of the enforcement officers to their duties."

C. Standards Applicable Under the Act and Permit[21]

As described above, the Act prohibits Mattco from discharging pollutants to the Receiving Waters except as permitted by and in compliance with California's General Industrial Permit. *See* 33 U.S.C. §§ 1311(a), 1342; 40 C.F.R. § 122.26(c)(1). The 1997 Permit and the 2015 Permit both require that dischargers meet all applicable provisions of the Act's Sections 301 and 402.

1. *Effluent Limitation*

The Permit prohibits any discharges of storm water associated with industrial activities or authorized non-storm water discharges that have not been subjected to BAT or BCT. 1997 Permit, Section B(3), 2015 Permit, Section V(A). The Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. *See* 1997 Permit, Section A(8); 2015 Permit, Section X(H).

Benchmarks and/or NALs established for conventional and industry specific pollutants discharged from the Facilities, and for which Mattco must analyze each sample, are summarized below at TABLE 1.

TABLE 1

BENCHMARK AND NAL VALUES APPLICABLE TO THE FACILITIES

PARAMETER/ POLLUTANT	EPA BENCHMARK	ANNUAL NAL	INSTANTANEOUS MAXIMUM NAL
pH	6.0-9.0 s.u.	n/a	6.0-9.0 s.u.
TSS	100 mg/L	100 mg/L	400 mg/L
O&G	15 mg/L	15 mg/L	25 mg/L
SC	200 uhmos/cm	200 uhmos/cm	n/a
TOC	110 mg/L	110 mg/L	n/a
COD	120 mg/L	120 mg/L	n/a
Al	0.75 mg/L	0.75 mg/L	n/a
N+N	0.68 mg/L	0.68 mg/L	n/a
Fe	1.0 mg/L	1.0 mg/L	n/a
Zn	0.117 mg/L	0.26 mg/L	n/a
Ni	1.02 mg/L	1.02 mg/L	n/a
Mg	0.064 mg/L	0.064 mg/L	n/a

2. *Receiving Water Limitations*

The Permit prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of an applicable Water Quality Standard ("WQS"), as

[21] The description of standards applicable under the Act and Permit are not intended as a comprehensive recitation of every potential requirement, nor a complete description of each standard addressed. Rather, this section of the Notice Letter is intended to summarize the most relevant standards to facilities like those operated by Mattco.

defined in, *inter alia*, the Basin Plan and CTR.[22] 1997 Permit, Section C(2); 2015 Permit, Section VI(A). Discharges that contain pollutants in excess of an applicable WQS violate these Receiving Water Limitations.

The Permit also prohibits storm water discharge and authorized non-storm water discharges to surface waters that adversely impact human health or the environment. 1997 Permit, Section C(1); 2015 Permit, Section VI(B). Thus, any discharge that contains pollutant concentrations exceeding levels that adversely impact aquatic species, the environment and/or human health constitute violations of these Receiving Water Limitations.

3. *Discharge Prohibitions*

In addition to the limitations discussed above, the Permit contains certain outright prohibitions. The General Industrial Permit prohibits the discharge of materials other than storm water ("non-storm water discharges" or "NSWD") directly or indirectly to waters of the United States. 1997 Permit, Section A(1); 2015 Permit, Section III(B). The Permit also prohibits storm water discharges that cause or threaten to cause pollution or contamination. 1997 Permit, Section A(2); 2015 Permit, Section III(C).

4. *Monitoring and Reporting Requirements*

Under the Permit, Mattco must develop and implement a storm water M&RP prior to conducting, and in order to continue, industrial activities. The primary objective of the M&RP is to detect and measure concentrations of pollutants in a facility's storm water discharges to ensure compliance with the Permit's Effluent Limitations, Receiving Water Limitations and Discharge Prohibitions. *See* 1997 Permit, Section B(2); *see also* 2015 Permit, Section X(I). A legally adequate M&RP ensures that BMPs achieve BAT/BCT, and is evaluated at least annually. The foundational element of a legally adequate M&RP is the development and implementation of a comprehensive site-specific SWPPP prior to commencement of industrial activity that is: a) crafted to achieve compliance with the Permit; and b) revised in response to lessons learned from data analyses and the prior year's implementation.

The principal M&RP requirements imposed by the 1997 Permit and 2015 Permit are substantially identical. *Compare* 1997 Permit, Sections B(3)-(16) *to* 2015 Permit, Sections X(I) and XI(A)-(D). The 1997 Permit required facilities conduct quarterly visual observations of all drainage areas for the presence of authorized and unauthorized non-storm water discharges. 1997 Permit, Section B(3). The 2015 Permit increased the frequency of visual observations to monthly, and requires that observations be completed at the same time samples are collected. 2015 Permit, Section XI(A). The Permit requires that facilities complete visual observations of storm water discharges from one event per month during the wet season. 1997 Permit, Section B(4); 2015 Permit, Section XI(A)(2). Dischargers must document observations, and any responses taken to address problems observed, including revisions made to the SWPPP. 1997 Permit, Sections B(3)-(4); 2015 Permit, Sections XI(A)(2)-(3). The Permit requires facilities to collect samples of storm water discharges from each of the discharge locations from at least two

[22] Industrial storm water discharges must strictly comply with water quality standards, including those criteria listed in the applicable basin plan. *See Defenders of Wildlife v. Browner*, 191 F.3d 1159, 1166-67 (9th Cir. 1999).

storm events under the 1997 Permit and at least 4 storm events under the 2015 Permit[23]—taking care that water collected is representative of the discharge from each discharge point. 1997 Permit, Sections B(5), (7); 2015 Permit, Sections XI(B)(1)-(5). All sampling analysis data must be submitted via SMARTS within thirty days of obtaining results. 2015 Permit, Section XI(B)(11).

III. Violations of the Clean Water Act and the Storm Water Permit

During the period before (Jan. 1992-May 2015) and since (May 2015-present) enrolling in the Permit, Mattco has wholly failed to carry out even its basic obligations under Act. As discussed in further detail below, the Facilities are in ongoing violation of the Permit, and violations span both the 1997 Permit and 2015 Permit. Specifically, the Facilities have failed to conduct any monitoring/sampling of stormwater discharges; failed to develop a legally adequate M&RP; failed to develop, implement and/or update a legally adequate SWPPP to ensure the development and implementation of BMPs that achieve BAT/BCT; and certified and filed demonstrable false Annual Reports. Mattco is subject to civil penalties for all violations of the Clean Water Act detailed below occurring since March 2, 2012.

A. Mattco has Violated and Continue to Violate the Storm Water Permit's Most Basic M&RP Requirement to Collect and Analyze Stormwater Discharges

As described above, the Permit requires Mattco *to first* develop and implement an M&RP that monitors pollutants in the Facilities' discharges, *and then* make commensurate BMP additions and/or revisions to ensure compliance with the Permit and Act. Mattco has been and continues to conduct operations at the Facilities with a legally inadequate M&RP. Information available to CCAT indicates that the Facilities have failed and continue to fail to sample qualifying storm events as required by the Permit, and these failures constitute negligent or intentional violations of the Act.

During the 2011-2012, 2012-2013, and 2013-14 Permit periods (July 1-June 30), the Facilities were operating without having enrolled in the Permit, and conducted no sampling or analysis of storm water data in violation of the Act. Mattco is subject to civil penalties for its failure to sample each qualifying storm event, as detailed in Exhibit A, during this period.

Despite having certified on June 19, 2015 at page 8 of its Annual Report for 2014-2015 that "[t]he facility immediately implemented a storm-water monitoring plan [upon] receiv[ing] coverage under the Industrial General Permit for Storm Water Discharges in May of 2015," Mattco failed to collect or analyze storm water samples during two qualifying storm events on Friday May 8, 2015 and Thursday May 14, 2015. Both of these storm events were sampled by neighboring facilities.

On June 17, 2016, Mattco again wrongly certified on page 5 of its Annual Report that "[d]uring the 2015-2016 storm season, there were no storm water discharge events, during scheduled facility operating hours that met all of the parameters in the general permit. Therefore,

[23] The 2015 Permit requires facilities to collect samples from each discharge location from two storm events within the first half of each reporting year (July 1-Dec. 31) and two storm events from the second half of each reporting year (Jan. 1-Jun 30).

no samples were taken." Information available to CCAT demonstrates that Mattco's claim is patently false. During the relevant timeframe there were as many as fifteen qualifying storm events, nearly all of which were sampled by at least one industrial facility in the City of Paramount.

As noted above, the 2015 Permit requires that all facilities submit to SMARTS analytical data with 30 days. As of March 2, 2017 at 1:54PM, Mattco had not uploaded data for a single storm event during the 2016-2017 permit period. During the relevant time, CCAT believes that there were as many as 9 qualifying storm events, at least 5 of which were sampled by neighboring facilities.

Mattco has engaged in a consistent pattern and practice of negligently or intentionally failing to collect and analyze storm water samples. Indeed it appears probable that Mattco has not taken a single storm water sample during its forty-eight year history. This is a serious and substantive violation of the Permit and Act. As noted earlier, the Permit assumes a certain level of good faith and civic responsibility on the part of permittees to collect and analyze storm water samples, and then engaged in an honest evaluation of how to remedy any problems that become apparent from the data.

Mattco's failure to conduct sampling and monitoring as required by the General Industrial Permit demonstrates that it has failed to develop, implement, and/or revise a legally adequate M&RP, and is therefore violating of the Act. Every day that the Facilities conduct operations in violation of the specific monitoring requirements of the Permit, or with an inadequately developed and/or implemented M&RP, is a separate and distinct violation of the Permit and the Act. Mattco has been in daily and continuous violation of the Permit's M&RP requirements every day since at least March 2, 2012. These violations are ongoing, and CCAT will include additional violations when information becomes available.

B. Failure to Develop and/or Implement Adequate BMPs; Failure to Prepare, Implement, Review and Update an Adequate SWPPP

The State Board has designated the SWPPP as the cornerstone of compliance with the NPDES Permit. Indeed the SWPPP, along with BMPs developed and described therein, is the planning and guidance document that assures compliance with the Permit's core Effluent Limitation (1997 Permit, Section B(3); 2015 Permit, Section V(A)), which requires dischargers to reduce or prevent pollutants associated with industrial activity in storm water discharges through the implementation of BAT/BCT.

Sections A(1) and E(2) of the 1997 Permit require dischargers to develop and implement a SWPPP that meet all of the requirements *prior to beginning industrial activities*.[24] The objective of the SWPPP is to identify and evaluate sources of pollutants associated with

[24] Section A(l) and Provision E(2) of the Storm Water Permit require dischargers to have developed and implemented a SWPPP by October 1, 1992, or prior to beginning industrial activities, that meets all of the requirements of the Storm Water Permit. The 2015 Permit, at Section X.B, requires "[a]ll dischargers…to implement their SWPPP…upon commencement of industrial activity."

industrial activities that may affect the quality of storm water discharges (and authorized non-stormwater discharges) from a facility, and then develop BMPs to reduce or prevent pollutant concentrations in storm water discharges. 1997 Permit, Section A(2), 2015 Permit, Section X(C). BMPs described in a SWPPP must, upon full implementation, be designed to achieve compliance with the Permit's discharge requirements. To ensure ongoing compliance with the Permit, the SWPPP must be evaluated and revised in response to observations or data collected through implementation of the M&RP. 1997 Permit, Sections A(9)-(10), 2015 Permit, Section X(B). Failure to develop or implement an adequate SWPPP, or update or revise an existing SWPPP as required, is a violation of the Permit. 2015 Permit Factsheet I(1).

Sections A(3)-A(10) of the 1997 Permit set forth the requirements for a SWPPP. Among other requirements, the SWPPP must include: a pollution prevention team; a detailed site map; a list of significant materials handled and stored at the site; a description of potential pollutant sources; an assessment of potential pollutant sources; and a description of the BMPs designed to reduce or prevent pollutants in storm water discharges, including structural BMPs where non-structural BMPs are not effective. Sections X(D) – X(I) of the 2015 Permit set forth essentially the same SWPPP requirements, except that all dischargers are now required to develop and implement a set of minimum BMPs, as well as any advanced BMPs as necessary to achieve BAT/BCT. As described above, a suit of effective BMPs serve as the basis for compliance with the Permit's technology-based effluent limitations. *See* 2015 Permit, Section X(H).

The 2015 Permit requires a more comprehensive assessment of potential pollutant sources than the 1997 Permit; more specific BMP descriptions; and an additional BMP summary table identifying each identified area of industrial activity, the associated industrial pollutant sources, the specific industrial pollutants, and the BMPs being implemented. 2015 Permit, Sections X(G)(2), (4), (5). The 2015 Permit further requires dischargers to implement and maintain, to the extent feasible, any one or more of the following advanced BMPs necessary to reduce or prevent discharges of pollutants in industrial storm water discharges: exposure minimization BMPs, storm water containment and discharge reduction BMPs, treatment control BMPs, and other advanced BMPs. 2015 Permit, Section X(H)(2). Failure to implement advanced BMPs as necessary to achieve compliance with either technology or water quality standards is a violation of the 2015 Permit. 2015 Permit, Section X(H)(2).

CCAT's principal concern with respect to the inadequacy of Mattco's SWPPP and BMP implementation is the outdoor grinding operations. Deficiencies in the Facilities' SWPPP and BMPs in this regard begin with a complete failure to identify and evaluate industrial processes and sources of pollution as required by the Permit and Act. *See* 2015 Permit, Section X(A)(4)-5) & (C)(1)(a). The SWPPP does not acknowledge, identify or evaluate "outdoor processing areas" or "outdoor work areas," both of which are described in expert sources on which the SWPPP is purportedly based. Information available to CCAT from a reconnaissance visit to the Facilities on Dec. 8, 2016 documented extremely concerning industrial activities taking place outdoors without being mentioned or evaluated in the SWPPP. Specifically, CCAT witnessed as many as 5 workers wearing industrial suits (full body/head cover and breathing/filter system) grinding donut-shaped metal parts (approx. 12"-15" diameter) with medium-sized power grinders (using approx. 5"-7" abrasive discs) in the location identified on the site map as "grinding area." *See* IMAGE 1 and IMAGE 2 below.

CCAT was pleased to see Mattco's dedication to protecting its employees from the fine

metal particulate that was visibly broadcasting from each workbench. However, CCAT was dismayed and distressed to observe and document Mattco's utter disregard for public health and failure to even endeavor to contain, capture or otherwise manage the metal dust (visible in IMAGE 1). Grinding was taking place over at least a one-hour period in an outdoor area without the benefit of any observable BMPs. CCAT is in possession of multiple videos that document the dispersal of particulate matter into the air from the "grinding area," as well as substantial accumulations of dust, small metal pieces and discarded metal scraps strewn about the entire area (visible in both images), indicating that basic housekeeping BMPs are either poorly developed or simply not implemented.

Despite the obvious potential for these activities to result in pollutants likely to affect the quality of industrial storm water, the word "grinding" appears only 3 times in the SWPPP, and not once to describe an industrial activity. The only BMPs described for any outdoor industrial activities are: 1) elevating metal materials; 2) a generic reference to "good housekeeping;" 3) inspecting outdoor areas; 4) employee training; and 5) locking gates to restrict access.

IMAGE 1

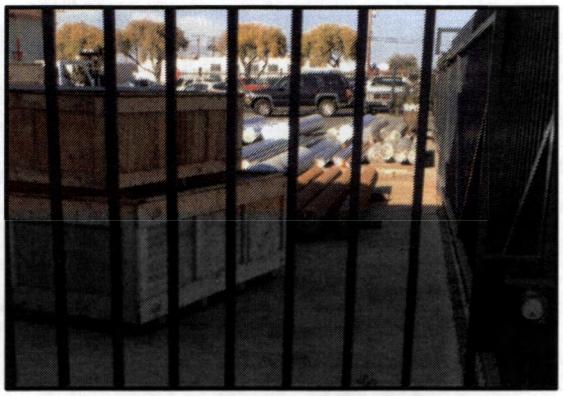
IMAGE 2

Photos, taken from Minnesota Avenue, of industrial activities taking place in the location identified as "grinding area" on Mattco's Site Map

CCAT's next concern with respect to SWPPP/BMP violations is Mattco's failure to identify or describe a single metal as a potential pollutant. Further, at no point does the SWPPP elaborate on specific processes used on the various metals present at the site (grinding, cutting, sawing, deburring, melting, etc.), the potential pathways by which the different metals might be exposed to storm water, or specific BMPs to address the various pathways (broom sweeping vs. regenerative sweeper truck). The SWPPP lacks essential details in identifying pollutants, evaluating pathways of exposure and describing site-specific BMPs. These deficiencies demonstrate that Mattco has failed, and continues to fail, to comply with the Permit's specific requirements and the Act's BAT/BCT mandate.

Lastly, CCAT believes that Mattco has failed and continues to fail to develop and implement adequate BMPs more generally. CCAT witnessed and documented substantial quantities of raw materials, finished materials, waste products and trash on the ground, exposed to the elements without the benefit any observable BMPs. *See* IMAGE 3 and IMAGE 4 below.

IMAGE 3



Raw materials and finished products without observable BMPs

IMAGE 4

Finished products and waste storage without observable BMPs

Lastly, CCAT believes that Mattco is under an obligation, given the overall layout and use of the Facilities' campus, to develop and implement exposure minimization BMPs. However, the SWPPP cursorily concludes its assessment of such BMPs by stating that the are "[n]ot applicable to this facility."

Mattco has failed and continues to fail to adequately develop, implement and/or revise a SWPPP in violation of the Permit. Everyday the Facilities operate without adequate BMPs is a separate and distinct violation of the Permit and Act. These violations are ongoing, and CCAT will include additional violations when information becomes available. Mattco has been in daily and continuous violation of the Permit's SWPPP requirements and Act's BAT/BCT mandate, and is subject to civil penalties for all such violations occurring since March 2, 2012.

E. Failure to File True and Correct Annual Reports

Section B(14) of the 1997 Permit requires a permittee to submit an Annual Report to the Regional Board by July 1 of each year, which includes a summary of visual observations and sampling results, an evaluation of the visual observation and sampling results, the laboratory reports of sample analysis, the annual comprehensive site compliance evaluation report, an explanation of why a permittee did not implement any activities required, and other information specified in Section B(13). The 2015 Permit includes substantially identical annual reporting requirement. *See* 2015 Permit, Section XVI.

Mattco has failed and continues to fail to submit Annual Reports that comply with these reporting requirements. For example, each Annual Report submitted to the Regional Board has certified that: (1) a complete Annual Comprehensive Site Compliance Evaluation was done pursuant to Section A(9) of the Storm Water Permit; (2) the SWPPP's BMPs address existing potential pollutant sources and additional BMPs are not needed; and (3) the SWPPP complies with the Storm Water Permit, or will otherwise be revised to achieve compliance. However, information available to CCAT, as described above, indicates that these certifications are erroneous.

Information available to CCAT indicates that Mattco has submitted incomplete and/or incorrect Annual Reports that fail to comply with the Storm Water Permit. As such, Mattco is in daily violation of the Permit. Every day Mattco conducts operations at the Facilities without reporting as required by the Permit is a separate and distinct violation of the Permit and Section 301(a) of the Act, 33 U.S.C. §1311(a). These violations are ongoing, and CCAT will include additional violations when information becomes available, including specifically violations of the 2015 Permit reporting requirements. *See* 2015 Permit, Sections XII, XVI.

IV. Persons Responsible for the Violations

CCAT puts Mattco on notice that it is the entity responsible for the violations described above. If additional corporate or natural persons are identified as also being responsible for the violations described herein, CCAT puts Mattco on notice that it intends to include those persons in this action.

V. Name and Address of Noticing Party

Jane Williams
California Communities Against Toxics (CCAT)
3813 50th Street West
Rosamond, CA 93560

VI. Counsel

Please direct all communications to legal counsel retained by CCAT for this matter:

Jesse Swanhuyser
Anacapa Law Group, Inc.
508 East Haley Street
Santa Barbara, CA 93103
(805) 689-1469
jswanhuyser@anacapalawgroup.com

VII. Penalties

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects Mattco to a penalty of up to $37,500 per day per violation for all violations occurring since March 2, 2012, up to and including November 2, 2015, and up to $51,570 for violations occurring after November 2, 2015. In addition to civil penalties, CCAT will seek injunctive relief to prevent further violations of the Act pursuant to Sections 505(a) and (d), and such other relief as permitted by law. *See* 33 U.S.C. §§ 1365(a), (d). Lastly, Section 505(d) of the Act permits prevailing parties to recover costs and fees, including attorneys' fees. *See* 33 U.S.C. § 1365(d).

CCAT believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. CCAT intends to file a citizen suit under Section 505(a) of the Act against Mattco, the Facilities and its agents for the above-referenced violations upon the

expiration of the 60-day notice period. However, during the 60-day notice period, CCAT would be willing to discuss effective remedies for the violations noted in this letter. If you wish to pursue such discussions in the absence of litigation, CCAT suggests that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period as CCAT does not intend to delay the filing of a complaint in federal court.

Sincerely,

Jesse C. Swanhuyser
Lawyer for California Communities Against Toxics

Attachment A – Rain Event Summary for the Facilities: 2012 through 2017

Cc: Jeff Sessions, U.S. Department of Justice
Scott Pruitt, U.S. Environmental Protection Agency
Alexis Strauss, U.S. Environmental Protection Agency (Region IX)
Thomas Howard, State Water Resources Control Board
Samuel Unger, Regional Water Quality Control Board (Region 4)

VIA U.S. CERTIFIED MAIL

Jeff Sessions, U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-001

Scott Priutt, Administrator
U.S. Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue, N.W.
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Alexis Strauss, Acting Regional Administrator
U.S. Environmental Protection Agency Region IX
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Thomas Howard, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, California 95812-0100

Samuel Unger, Executive Officer
LA Regional Water Quality Control Board
320 West Fourth Street, Suite 200
Los Angeles, CA 90013

Exhibit A

STORM EVENT SUMMARY: March 2012-March 2017
Days with Rainfall above 0.1 inches

[Source: https://www.wunderground.com/history/airport/KLGB/2016/12/9/MonthlyHistory.html?req_city=Paramount&req_state=&req_statename=California&reqdb.zip=&reqdb.magic=&reqdb.wmo=]

Date (mm/dd/yy)	Rainfall (inches)
03/17/12	0.49
03/18/12	0.23
03/25/12	0.58
04/10/12	0.13
04/11/12	0.54
04/13/12	0.45
04/25/12	0.28
04/26/12	0.12
10/11/12	0.30
11/08/12	0.12
11/29/12	0.29
11/30/12	0.46
12/02/12	0.18
12/03/12	0.42
12/12/12	0.12
12/13/12	0.13
12/18/12	0.16
12/24/12	0.98
12/26/12	0.12
12/29/12	0.16
01/06/13	0.12
01/24/13	0.75
01/25/13	0.10
02/19/13	0.18
03/08/13	0.83
05/05/13	0.11
05/06/13	0.38
05/07/13	0.17
11/20/13	0.18
11/21/13	0.18
11/29/13	0.41
12/07/13	0.10
12/19/13	0.24
02/06/14	0.17
02/27/14	0.85
02/28/14	1.20

03/01/14	0.29
03/02/14	0.15
04/01/14	0.10
04/25/14	0.17
09/08/14	0.11
10/31/14	0.18
11/01/14	0.15
11/30/14	0.51
12/01/14	0.10
12/02/14	1.04
12/02/14	0.81
12/12/14	1.54
12/16/14	0.34
12/17/14	0.35
01/10/15	0.35
01/11/15	0.40
01/26/15	0.10
02/22/15	0.18
03/02/15	0.46
04/07/15	0.21
05/08/15	0.19
05/14/15	0.49
07/18/15	0.35
07/19/15	0.19
09/15/15	0.93
12/13/15	0.10
12/19/15	0.19
12/21/15	0.11
12/22/15	0.50
01/05/16	0.88
01/06/16	0.61
01/07/16	0.47
01/31/16	0.27
02/17/16	0.52
03/06/16	0.38
03/07/16	0.13
03/11/16	0.35
10/17/16	0.29
11/20/16	0.42
11/21/16	0.38
11/26/16	0.35
12/15/16	0.30
12/16/16	0.48
12/21/16	0.59
12/22/16	0.64

12/23/16	1.07
12/30/16	0.41
01/04/17	0.28
01/05/17	0.24
01/08/17	0.16
01/09/17	0.55
01/10/17	0.12
01/11/17	0.16
01/12/17	1.42
01/19/17	0.72
02/03/17	0.22
02/06/17	1.11
02/07/17	0.17
02/10/17	0.21
02/17/17	2.77